

Instream Flow Administrative Correction: March 8, 2007

In February 1998, the Record of Decision (ROD) for the Final Environmental Impact Statement and Land and Resource Management Plan for the Routt National Forest was signed. After the ROD was issued the decision was appealed and sent to the Chief of the Forest Service for review. On 1/19/2001 the Chief issued his decision on the appeal. It stated:

“I find that the Revised Plan is not consistent with the Federal Land Policy and Management Act in its treatment of instream flows. The direction in the Standards and Guidelines does not reflect the mandatory nature of the law. The Forest Service is obligated to review reissuance of special use authorizations and new applications in compliance with FLPMA and the Forest Service regulations. FLPMA is explicit in its requirements that the Forest Service establish terms and conditions to minimize damage to scenic and aesthetic values and fish and wildlife habitat and otherwise protect the environment. Since Forest Plans cannot be inconsistent with statutes and regulations, Standard 1-8 on page 1-7 and Guidelines 1 – 3 following the Standard are a nullity. Reissuance of authorizations or new authorizations shall be made in compliance with section 505 and 36 CFR 251.56. The Regional Forester’s decision is reversed.”

Following the chief’s appeal decision, the Secretary of Agriculture completed a discretionary review of the Chief’s appeal decision. On March 29, 2001 the Discretionary Review Decision On the Chief’s Appeal Decision Regarding the Routt National Forest Revised Land and Resource Management Plan stated:

“I affirm, with instructions, the Chief’s decision to reverse the Regional Forester regarding the conditioning at issuance and re-issuance of authorizations under the Federal Land Policy Management Act (FLPMA). This issue is explained in detail below.

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The Chief found that Standard 1-8 (sic) on page 1-7 of the Revised Forest Plan and Guidelines 1-3 that follow the Standard are not consistent with the provisions of Section 505 of FLPMA or 36 CFR 251.56. The Standard and Guidelines do not accurately reflect the requirements to include, in all authorizations for water storage and diversion facilities, “terms and conditions which will ... minimize damage to scenic and aesthetic values and fish and wildlife habitat and otherwise protect the environment....” (FLPMA, sec. 505, 43 USC 1765 (a)(ii); 36 CFR 251.56 (a)(1)(i)(B).) Accordingly, the Chief reversed the Regional Forester’s decision on this issue.

After reviewing the appeal record, I concur with the Chief’s conclusion that the language in Standard 1-8 and Guidelines 1-3 on page 1-7 of the Revised Forest Plan does not meet the requirements of the applicable statute and regulation. I also agree with his instruction that issuance and re-issuance of authorizations for water storage and diversion facilities must comply with Section 505 of FLPMA and 36 CFR 251.56 at the project level. I add the instruction that the Forest issue

an errata sheet that changes page 1-7 of the Revised Forest Plan to require compliance with Section 505 of FLPMA and 36 CFR 251.56 when issuing and re-issuing authorizations for water storage and diversion facilities.”

Although this direction was received in 2001 the Forest was in the process of completing the Medicine Bow Forest Plan revision and appeals, as well as completing the Thunder Basin National Grassland Plan revision and appeals. With all these other planning activities, the planning team has not had the opportunity to work on completing this errata/administrative correction to the Routt Forest Plan until now.